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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1959.

No. 269

NANCY CORINNE DYER and J. RAYMOND DYER,
Petitioners,

CYRUS L. DAY,
Intervener-Petitioner,

v.

SECURITIES AND EXCHANGE COMMISSION and
UNION ELECTRIC COMPANY.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit.

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To the United States Court of Appeals for the Eighth Circuit.

Petitioners and intervener-petitioner (hereinafter collectively called "petitioners") pray that a writ of certiorari issue to review the judgment of the aforesaid court entered April 10, 1959, in this case, No. 15,989 below.

OPINION BELOW.

The opinion of the aforesaid court (Appendix B-1) is reported in **266 F. 2d 33.** In it the court affirmed in all respects the orders of the Securities and Exchange Commission ("SEC") on review before it, which orders of March 21 and 25, 1958 (Appendix A-4 and 5) permitted a declaration of proxy material filed with the SEC by the management of Union Electric Co. (a Missouri public utility holding company hereinafter called "Union") to become effective as a basis for management's solicitation of proxies from Union's stockholders for voting use at the April 21, 1958 annual stockholders' meeting of that company.

In that opinion the court below found that there was no basis in the record for the disqualification of SEC Commissioners Orrick, Patterson, Hastings and Sargent, which disqualifications petitioners had sought before the SEC on the grounds of bias, prejudice and partiality, and which bias, prejudice and partiality petitioners pleaded in their petition for review.

The court below also affirmed generally the ruling of the SEC that it was not the "proper forum" in which to try out the question of the disqualification of Union's president J. Wesley McAfee, a nominee under said proxy material for a directorship in Union, on the ground of perjury allegedly committed on March 13, 1957 at the hearing before the SEC Hearing Examiner who conducted the 1957 proxy declaration proceedings of Union's management preceding these. Those 1957 proceedings were closely connected with these, and were treated as being so by the SEC. Findings therein based on that testimony of Mr. McAfee were adopted in the SEC's Findings and Opinion here.

JURISDICTION.

The judgment (Appendix B-2), which affirmed the SEC orders and dismissed the petition for review, was entered April 10, 1959. Rehearing was denied May 11, 1959. Jurisdiction is invoked under **28 U. S. C. 1254 (1)**.

Jurisdiction of the court below was invoked under Sec. 24 (a) of the Public Utility Holding Company Act of 1935, **15 U. S. C. 79x**, which also specifically authorizes this certiorari proceeding. Reversal of the judgment below is sought since that judgment involves jurisdiction under Art. III, Sec. 2 of the Constitution.

QUESTIONS PRESENTED.

1. Whether the SEC is the proper forum in which to take up the question of disqualification of SEC Commissioners and the question of disqualification of a director in a public utility holding company affected with a national public interest who is seeking SEC approval of proxy material furthering his candidacy for re-election.

2. Whether the court below, which is a reviewing court and not a court of re-trial, may lawfully substitute its own legal reasoning, whether good or bad, in support of an assumption of jurisdiction on the part of SEC over petitioners' thrice asserted protest based on a factual statement offered and admitted in evidence and the "exclusive jurisdiction" provision of Sec. 24 (a) of the Holding Company Act (Appendix A-1), when the SEC itself advanced no legal or factual basis whatsoever for that assumption of jurisdiction.

3. Whether the SEC may treat as valid and entitled to legal operation in these 1958 proceedings a previous order